

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PETE LIVINGSTON,

Plaintiff,

Case No. 07-CV-7835 (RMB) (KNF)

v.

KEYA MORGAN aka KEYARASH
MAZHARI aka KEYA MAZHARI,
KEYA GALLERY, AND DOES 1-100

**PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE FOX'S ORDER
DATED APRIL 29, 2008 DENYING
DEFENDANTS' APPLICATION FOR A
NEW DISCOVERY DEADLINE**

Defendants.

Plaintiff, Pete Livingston, through his attorneys, Smith, Sovik, Kendrick & Sugnet, P.C., pursuant to Federal Rule of Civil Procedure 72(a) hereby files his Objections to the Honorable Kevin Nathaniel Fox's Order dated April 29, 2008 denying Defendants' application for a new discovery deadline.

I. Factual Background

On January 22, 2008, a status conference was held before the Honorable Richard M. Berman wherein the Court directed that all fact discovery be completed by May 1, 2008. Moreover, the Court stated that responses and objections to written discovery were to be served within twenty-one (21) days after service of the written discovery. Further, during the January 22, 2008 conference, Plaintiff's counsel served Defendants with a copy of the Summons and Complaint. (*See* Docket 12). Thus, Defendants were required to file an Answer to the Complaint on or about February 11, 2008. Defendants, however, submitted a letter to the Court on February 7, 2008, requesting a twenty (20) day extension of time to file an Answer. (*See* Docket 13). The Court granted Defendants a twenty (20) day extension of time to either file an

Answer to the Complaint or move pursuant to the Court's individual rules. (*See* Docket 13). Therefore, Defendants had until on or about March 3, 2008, to respond to Plaintiff's Complaint.

Defendants submitted a letter to the Court on February 20, 2008, requesting a pre-motion conference because it intended to file a motion to dismiss Plaintiff's Complaint. (*See* Docket 14). The Court directed Plaintiff to respond to Defendants' letter by February 26, 2008. (*See* Docket 14). Plaintiff responded to Defendants' letter on February 26, 2008, and the Court thereafter scheduled a conference for March 11, 2008. (*See* Docket 15).

During the March 11, 2008 conference, the Court: permitted Plaintiff to file an amended complaint; directed Defendants to file their motion to dismiss by April 8, 2008; directed Plaintiff to respond to the motion by April 23, 2008; and directed Defendants to file a reply by April 30, 2008. (*See* Docket 21). Moreover, the Court indicated there was no reason to stay discovery and that the parties should comply with the discovery deadlines established during the January 22, 2008 conference.

Plaintiff filed a second amended Complaint on March 19, 2008. (*See* Docket 17). Plaintiff served Interrogatories and Requests for the Production of Documents on April 9, 2008. Defendants' responses to Plaintiff's written discovery were due April 30, 2008. Plaintiff scheduled Defendant Keya Morgan's deposition for May 1, 2008, and properly served a Notice of Deposition of Keya Morgan on April 15, 2008. Defendant failed to appear for that deposition.

II. Argument

Plaintiff respectfully objects to Magistrate Judge Fox's Order denying Defendants' application for a new discovery deadline. An extension of the discovery period is warranted given the circumstances of this case. From his perspective, Judge Fox might not have been aware of the mitigating factors as to why the parties had not initiated discovery following the

January 22, 2008 conference. Plaintiff did not immediately commence discovery following the January 22, 2008 conference because Defendants had not yet answered Plaintiff's Complaint and Plaintiff assumed discovery was stayed. Defendants' Answer was not due until on or about February 11, 2008, and then not until on or about March 3, 2008, following Defendants' request for an extension of time to file their Answer to Plaintiff's Complaint. Furthermore, on February 20, 2008, Defendants expressed their intention to file a motion to dismiss Plaintiff's Complaint. Thus, in an effort to conserve resources and because the Court might grant Defendants' motion to dismiss the complaint, and therefore preclude the need for discovery, Plaintiff did not serve written discovery upon Defendants or notice any depositions.

The Court scheduled a pre-motion conference for March 11, 2008, regarding Defendants' motion to dismiss. During this conference, the Court stated discovery would not be stayed during the pendency of Defendants' motion to dismiss and directed the parties to comply with the previously set discovery deadlines. Thereafter, Plaintiff actively pursued discovery from Defendants.

Plaintiff served written Interrogatories and Requests for Production of Documents on April 9, 2008, to be answered by Defendants by April 30, 2008, which was within twenty-one (21) days after service. Plaintiff based the twenty-one (21) day response period on statements made during the January 22, 2008 conference wherein the Court indicated responses and objections to discovery were to be made within twenty-one (21) days after service. Defendants served their discovery responses via U.S. mail on May 1, 2008. Plaintiff's counsel, however, did not receive Defendants' responses until after the close of discovery on May 5, 2008. Further, Defendants' responses are incomplete and Plaintiff's counsel intends to confer with Defendants' counsel to resolve any disputes with the responses. If Plaintiff, however, cannot resolve the

discovery disputes with Defendant, Plaintiff will be required to involve the Court. Thus, a limited extension of the discovery period is warranted to resolve any issues with Defendants' discovery responses.

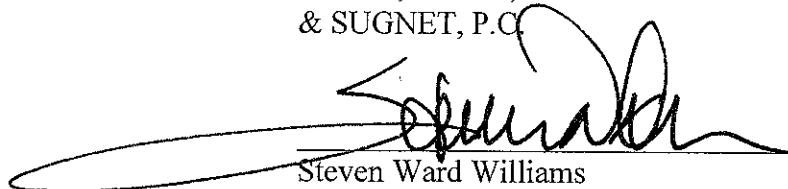
Moreover, Plaintiff properly served a notice of deposition for Defendant Keya Morgan on April 15, 2008. Plaintiff scheduled Defendant Morgan's deposition for May 1, 2008, which was within the discovery period. Defendant Morgan did not appear for his deposition. Thus, Plaintiff seeks additional time to confer with Defendants' counsel regarding scheduling Defendant Morgan's deposition and to then depose Defendant Morgan regarding the facts and issues of this case.

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that this Court overrule Magistrate Judge Fox's Order dated April 29, 2008 and thereby establish a new discovery deadline of July 14, 2008, for the limited purpose of securing Defendant Keya Morgan's deposition and complete responses to Plaintiff's Interrogatories and Requests for Production of Documents.

Dated: May 13, 2008.

SMITH, SOVIK, KENDICK
& SUGNET, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Steven Ward Williams, is written over a horizontal line.

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